



December 22, 2006

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Washington, DC 20554

**Re: Notification of *Ex Parte* Meeting: Docket Numbers CC 02-6;  
CC 96-45; CC 97-21; WC 03-109; and WC 05-195**

Dear Ms. Dortch:

Yesterday, on behalf of Tri-Rivers Educational Computer Association ("TRECA") and Metropolitan Educational Council ("MEC") undersigned counsel and Peter Gutmann and Cavan Fabris of Womble, Carlyle, Sandridge and Rice PLLC conducted an *ex parte* meeting with Anita Cheng, Regina Brown, Gina Spade, and Alex Minard. The parties discussed the points set forth in the attached presentation at the meeting.

In accordance with the Commission's rules, 47 C.F.R. Sec. 1.1206(b)(1), TRECA and MEC is electronically filing in the above-referenced dockets this letter, along with the attached materials.

Respectfully submitted,

Mark Palchick  
*Counsel to Tri-Rivers Educational  
Computer Association and Metropolitan  
Educational Council*

Enclosures

cc: Anita Cheng  
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CC 02-6; CC 96-45; CC 97-21; WC 03-109; and WC 05-195



## Internet Access

### Eligibility Requirements for All Internet Access Services:

Internet access is an information service. Briefly, an information service is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...." [47 U.S.C. 153(20)].

Support in this funding category is only available for basic conduit access to the Internet or for services that are an integral component part of basic conduit access. Support in this category of service is not available for content, equipment purchases by applicants, or services beyond basic conduit access to the Internet.

To qualify as Internet access, all services must reach the boundary of public Internet space.

Service providers for Internet access need not be telecommunications carriers.

Function	Description
E-mail Service	<p>Internet-based <u>e-mail service</u> is eligible. Such a service is often included in the cost of basic conduit access to the Internet or may be provided at a separate cost, either as a fixed charge and/or on a per-user or other basis.</p> <p>Some e-mail services may include substantial ineligible features, such as calendaring functions, collaboration tools, and services to ineligible users. Funding is limited strictly to the eligible e-mail portion. Any <u>cost allocation</u> must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components.</p>
Internet Access	<p>Basic conduit access to the Internet is eligible regardless of technology platform. Access technologies include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Telephone dial-up</li> <li>• <u>T-1 lines</u></li> <li>• <u>Digital Subscriber Line (DSL)</u></li> <li>• <u>Cable Modem</u></li> <li>• Wireless</li> </ul> <p>Eligible Internet access may include features typically provided for adequate functionality and performance when provided as a standard component of a vendor's Internet access service. Such features may include <u>Domain Name Service (DNS)</u>, <u>Dynamic Host Configuration Protocol (DHCP)</u>, and <u>firewall</u></p>

	<p>protection against unauthorized access.</p> <p>A wireless Internet access service is eligible under the same provisions as wired access to the Internet.</p> <p>Wide Area Network facilities can be eligible for funding as a part of Internet access if the service is limited to basic conduit access to the Internet and the offering is the most cost-effective means of accessing the Internet.</p> <p><u>GSP (Global Service Provider) fees</u> necessary to obtain Internet access are eligible.</p> <p>A wireless Internet access service designed for portable electronic devices is eligible to be funded if used for educational purposes.</p>
Web Hosting	<p>A <u>web hosting</u> service that provides a means for a school or library to display content on the Internet is eligible.</p> <p><u>Domain name registration</u> necessary for the creation of a school or library website is eligible for discount.</p> <p>Funding is limited strictly to the eligible web hosting function. Some web hosting services may include ineligible features, such as software applications and content editing features. Funding will not be provided for such features. Any <u>cost allocation</u> must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components.</p>
Other Eligible Internet Access Services	<p>Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of an eligible Internet access service.</p> <p>Please see the <u>Miscellaneous</u> section of this document for additional entries applicable to Internet access, such as charges for installation and configuration.</p>
<p>Ineligible for E-rate Funding as Internet Access Services</p> <p><i>(Not Eligible)</i></p>	<p>The following services are <b>NOT ELIGIBLE</b> for discount:</p> <ul style="list-style-type: none"> <li>• <u>Internet content</u> or charges for the creation or display of information. Internet access that provides features or content that go beyond basic conduit access to the Internet is not eligible for funding. (E-mail service and e-mail account fees, however, are not considered Internet content. Applicants may accept an Internet Access service with minimal content included if the content meets the limitations for Ancillary Use. See Special Eligibility Conditions below for Ancillary Use.)</li> <li>• Costs attributable to the creation or modification of information, such as a <u>web site creation fee</u> or content maintenance fee</li> <li>• Charges to access Internet content or limited-access</li> </ul>

	<p>information</p> <ul style="list-style-type: none"> <li>• Software, services, or systems used to create or edit Internet content</li> <li>• <u>Internet2</u> fees</li> <li>• <u>Dark fiber</u> service</li> <li>• Training in the use of the Internet</li> <li>• Costs for training provided via the Internet</li> <li>• Services that go beyond basic conduit access to the Internet</li> <li>• Point-to-point connectivity of data, video, or voice applications that are to be provided only by eligible telecommunications carriers</li> <li>• Specialized services that go beyond basic conduit access to the Internet, such as Virtual Private Network services</li> <li>• Web site creation fee</li> <li>• Electronic library/on-line public access and associated software</li> </ul> <p>Separate pricing for the following components when not included in the standard configuration of an Internet access service is <b>NOT ELIGIBLE</b>:</p> <ul style="list-style-type: none"> <li>• <u>Caching service</u></li> <li>• <u>Content filtering service</u></li> <li>• <u>Web Casting</u></li> </ul> <p>Please see the <u>Miscellaneous</u> section of this document for additional entries applicable to Internet access. For example, finance charges and termination charges are not eligible.</p>
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## Schools and Libraries News Brief

July 21, 2006

### Commitments for Funding Year 2006

**Funding Year 2006.** USAC will release FY2006 Wave 14 funding commitment decision letters (FCDLs) July 25. As of July 21, FY2006 commitments total over \$505 million for approved Priority 1 requests (Telecommunications Services and Internet Access).

USAC will continue to issue weekly funding commitment waves. After noon on the date that the FCDLs are mailed, you can check to see if you have a commitment by using USAC's [Automated Search of Commitments](#) tool.

### Caution about Eligibility of Internet Access

The eligibility of services provided in the Internet Access category of service is subject to certain limitations. USAC periodically issues a [cautionary reminder message](#) about the differences between eligible Internet access and eligible telecommunications services so that applicants and service providers clearly understand these limitations.

The [Eligible Services List for FY2006](#) indicates that the Internet Access category of service is "limited to the provision of 'basic conduit access' to the Internet." Basic conduit access includes access to email and the World Wide Web, so USAC can therefore provide discounts on these Internet access services.

However, basic conduit access does **not** include advanced functions such as direct exchange of data or video between applicant sites or the transport of point-to-point connectivity of data, video, or voice applications that are to be provided only by eligible telecommunications carriers.

To be eligible for discounts in the Internet Access category of service, all services must reach the boundary of public Internet space.

Here are three examples to help clarify the eligibility of Internet access services:

**Example 1.** School District A contracts with an Internet service provider to provide Internet access, which is used to provide email and access to the World Wide Web to ten schools in that district. In addition, School District A has installed a web server at the high school which provides information about the district to users of the World Wide Web. All of these uses are consistent with basic conduit access to the Internet, and USAC can provide discounts on the entire amount of this funding request for these services in the Internet Access category of service.

**Example 2.** School District B contracts with an Internet service provider for the same services as School District A. In addition to those services, School District B has installed Virtual Private Network components that enable direct connectivity between individual schools. This direct connectivity enables video distance learning among those individual schools and allows data and file sharing. In addition, an Internet-based phone service is provided. Any and all of these additional features go beyond basic conduit access to the Internet, and are not eligible in the Internet Access category of service.



- School District B can apply for the eligible portion of the Internet Access services by doing a cost allocation and removing the ineligible portion from its funding request.
- If School District B does not do a cost allocation and the ineligible services comprise 30% or more of the funding request, the funding request will be denied under the 30% Rule.

**Example 3.** School District C contracts with an eligible telecommunications carrier for the same services as School District B, but it applies for those services in the Telecommunications Services category of service. Because the service provider is a telecommunications carrier — that is, this service provider has met specific program requirements for providing telecommunications services — USAC can provide funding for these services.

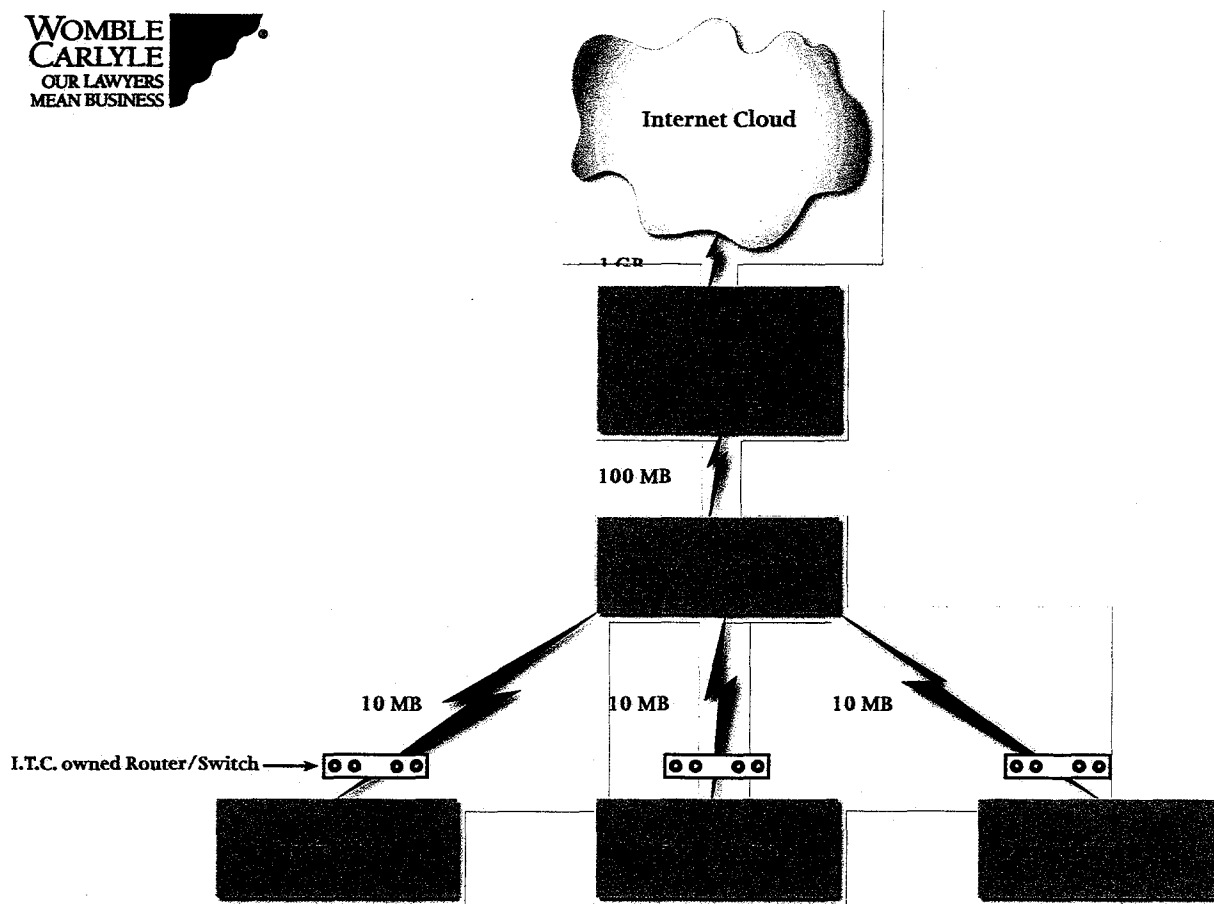
Applicants must select the correct category of service for the services they wish to obtain. Service providers should be sure that they properly represent FCC eligibility requirements when they market their offerings. Remember that USAC must seek the return of funds that have been used for ineligible products and services.

You may download and print copies of Schools and Libraries News Briefs on USAC's website. You may subscribe to or unsubscribe from this news brief. For program information, please visit the Schools and Libraries area of the USAC website, submit a question, or call us toll-free at 1-888-203-8100. Feel free to forward this news brief to any interested parties.

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**Note: All circuits and switches/routers are owned by the I.T.C. Internet Service Provider.  
District/building LAN's are connected to a District-owned switch for local traffic.**





## **Step 1: Educational Service Agencies**

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State laws determine eligibility of Educational Service Agencies for Schools and Libraries Program support.

### ***Background***

Educational Service Agencies (ESAs) in many states play key roles in the economic and efficient provision of a wide range of educational services to their component school districts. ESAs are known by a variety of names including Educational Service Units (ESUs), Local Educational Agencies (LEAs), and Board of Cooperative Educational Services (BOCES). This guidance will refer to all these types of entities as ESAs. Please see the [list of the ESAs in states that have requested eligibility determinations](#).

ESA services may include:

- Instructional-level services: Schools and programs (e.g., special education programs) that use services that may be eligible for discounts.
- Instructional support-level services: Staff and curriculum development services to their districts.
- Non-instructional-level services: Technology planning and implementation services and may also serve as service providers.

### ***Eligibility to Receive Support***

Federal law defines an ESA as a "regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies." To determine whether an ESA is eligible to receive Schools and Libraries support as an applicant, FCC rules governing the program require USAC to determine whether the ESA provides elementary or secondary education as determined under state law. USAC determines whether the entity provides elementary or secondary education to its student population and whether the ESA facility is eligible for support because elementary or secondary education, as defined in state law, is provided at that facility. FCC rules do not specifically define or address ESAs.

USAC conducts a biennial survey of states and territories to determine whether ESAs are eligible to receive funding. State and territory officials are asked to describe the programs served by ESAs and whether ESAs operate facilities that they either own or lease that contain classrooms. The officials are asked to provide legal support for the information they supply and to certify the accuracy of their determinations. The [Eligibility Table for Educational Service Agencies](#) includes the most recent information provided by the states and territories.

### **Potential Conflict Among Functions Performed by ESAs in the Schools and Libraries Process**

ESAs may perform as many as four roles in the Schools and Libraries Program:

- ESAs are applicants for program discounts.
- ESAs provide program consulting assistance to their component districts.

- ESAs review and approve district Technology Plans.
- In some instances, ESAs are service providers of eligible services.

When ESAs function as service providers, two potential conflicts may raise concerns:

- In some states, state law or regulation permits school districts to select services provided by ESAs on a non-competitive basis.
- Some states provide subsidies so that ESAs may provide discounted rates to public schools.

These roles raise potential conflict of interest issues, primarily with respect to complying with the FCC's competitive bidding requirements, and assuring that ESAs with the dual roles of providing Technology Plan development services and approving Technology Plans are not compromising the Technology Plan process.

### ***Guidelines for Compliance with FCC Rules and Avoiding Conflicts of Interest***

#### **ESAs that Do Not Provide Eligible Services**

- An ESA that does not serve as a service provider may assume the function of an applicant in filing the *Description of Services Requested and Certification Form* (Form 470), evaluating bids, filing the *Services Ordered and Certification Form* (Form 471) applications, and obtaining discounts for services for itself (if it is an eligible recipient of discounted services) and its component districts.
- An ESA that does not function as a service provider may assume the function of a consultant to its component districts in developing Technology Plans, consulting with the component districts as to their service and equipment requirements, and helping its component districts apply for and administer the receipt of discounts.
- An ESA that does not function as a service provider may approve Technology Plans (if it is a USAC-approved Technology Plan Approver). However, an ESA that has played a significant role in developing a Technology Plan as a consultant may approve that Technology Plan only if the ESA can assure USAC, and provide documentation supporting its assurance, that the ESA maintains a review and approval process independent of the Technology Plan development role.

In determining whether the ESA's role is "significant," USAC would consider, but not be limited to, the following: (i) whether the ESA developed and wrote the Technology Plan; and (ii) whether the ESA provided advice about the content of the Technology Plan that was substantially incorporated in the plan.

#### **ESAs that Provide Eligible Services**

Fundamental requirements of the Schools and Libraries program include that applicants select service providers through a fair and open competitive process, that the most cost-effective bid for services or equipment is selected with price being the primary factor considered, and that the alternative selected is the most cost-effective means of meeting educational needs and technology plan goals.

A potential conflict may arise when an ESA is a service provider and also an applicant, a consultant to school districts, or a Technology Plan approver. The potential conflict is that the selection of the service provider may not be fair and open but may, in fact, provide an unfair advantage to the ESA as service provider.

The potential conflict may be resolved if:

The ESA provides only one category of eligible services (telecommunications service, Internet access, internal connections other than basic maintenance, or basic maintenance of internal connections), *and* is functioning in its non-service provider role(s) (e.g., applicant, consultant, technology plan approver) only with respect to separate applications for other categories of services

Examples include, but are not limited to the following: (i) an ESA cannot be both an applicant and a service provider on the same application; (ii) an ESA that is a consultant to an applicant for a particular application cannot also be a service provider on that application; (iii) an ESA that provides consulting services to develop and/or approves the applicant's Technology Plan cannot be a service provider on the applications that rely on that Technology Plan.

The ESA is large enough to provide organizational and functional separation between staff acting as service providers and staff providing technology plan support and application and administration assistance. However, the ESA must be prepared to clearly show the separation of functions to USAC with appropriate documentation. Examples of such documentation include organizational flow charts, budgetary codes, and supervisory administration.

#### Other Potential Concerns

Even if state procurement rules permit public school districts to select an ESA's services on a non-competitive basis, FCC rules require that applicants for services must use competitive bidding for eligible services. The FCC competitive bidding requirements must be met to be eligible for discounts. These requirements include:

- Posting on USAC's website a *Description of Services Requested and Certification Form* (FCC Form 470)
- Fair and open consideration of all resulting proposals, whether in response to a Request for Proposal (RFP) or to an FCC Form 470, and
- Selecting the most cost-effective bid with price being the primary factor.

Some states provide off-setting aid payments to public school districts that have the effect of reducing some ESA charges for equipment and services eligible for discounts. If an ESA is acting as a service provider, any state reductions must be applied **AFTER** the discount is applied. The evaluation of alternatives must include price without discounts as the primary factor. It does not violate FCC rules to include another factor (weighted less heavily than the non-discounted price) relating to the availability of discounts from other sources for particular alternatives.

Finally, since ESAs may be both applicants and service providers on separate applications, discounts **cannot** be paid twice for the same service. If an ESA is serving as an Internet service provider to its districts and the districts are seeking discounts on that Internet access, the ESA cannot also seek discounts as a consortium leader for those services from the underlying providers.

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#### Step 2      Develop a Technology Plan

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Last modified on 1/6/2006

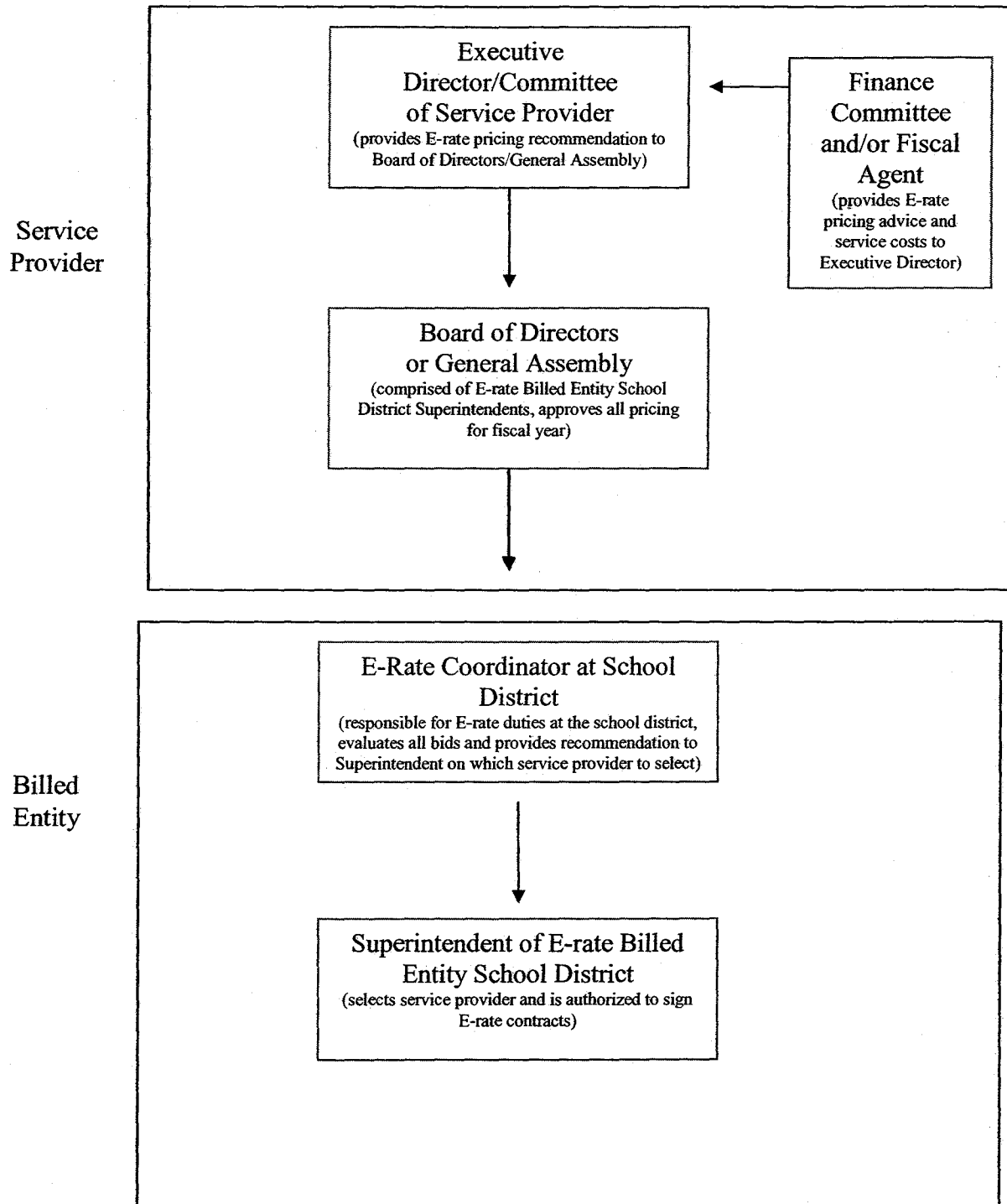
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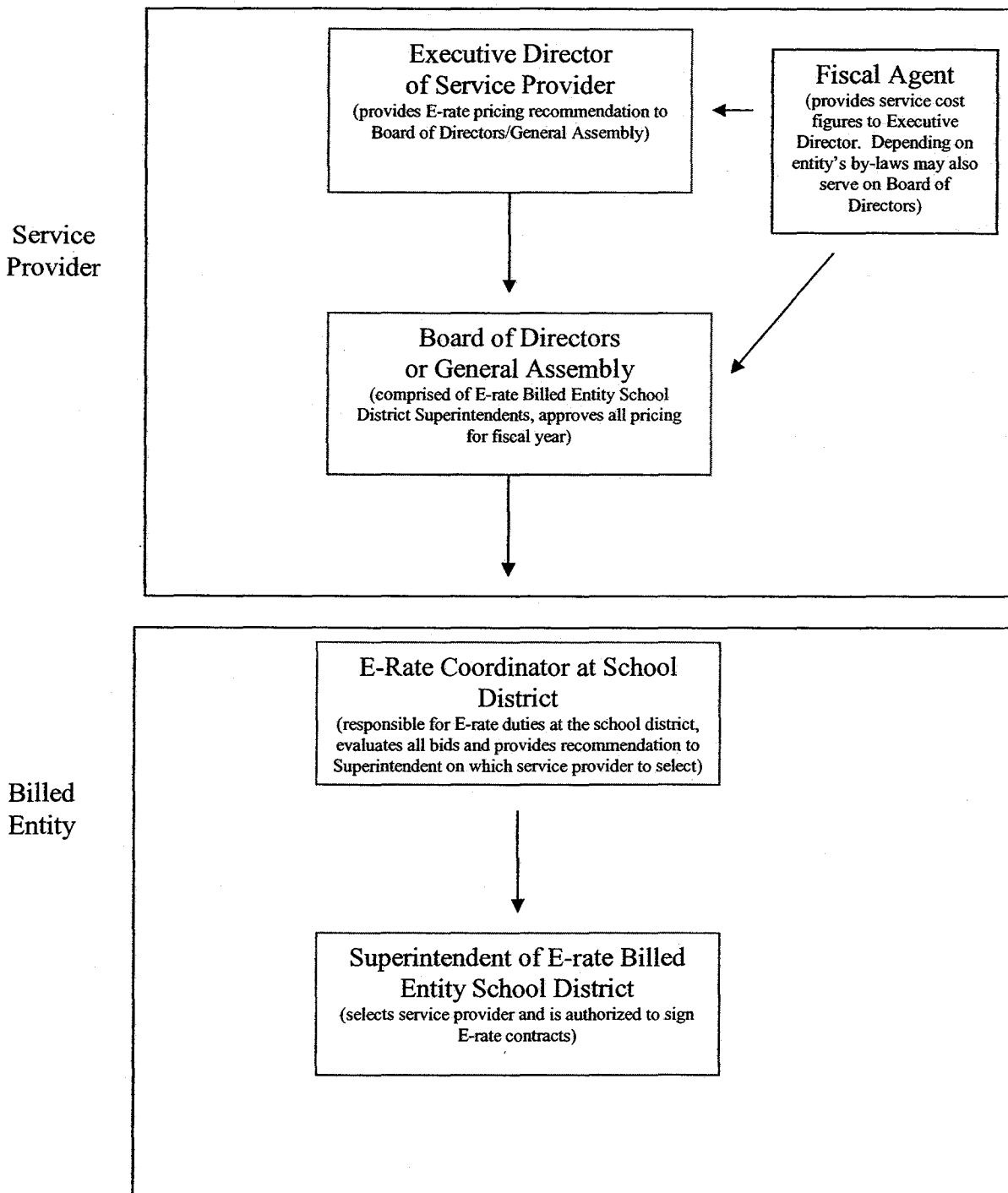




# Decision Tree – 3313.92 Entity



## Decision Tree – Council of Governments (COG-A)



## Decision Tree – Council of Governments (COG-B)

